

IN THE UNITED STATES DISTRICT COURT FOR  
 THE MIDDLE DISTRICT OF ALABAMA RECEIVED  
 NORTHERN DIVISION

UNITED STATES OF AMERICA )  
 )  
 V. )  
 )  
 HORACE MILTON BLACK )

2006 JAN -4 A # 40

CIVIL ACTION NO. 2:05cv1178-T

**AFFIDAVIT OF TERRY R. SMYLY**

My name is Terry R. Smyly. I make this affidavit pursuant to court order dated December 15, 2005, and in response to Horace Black's 2255 challenge to his conviction and sentencing for armed robbery in the above styled case. I was appointed counsel for Horace Black in that case. I met with Mr. Black at the Montgomery City Jail after he was sentenced in order to discuss whether or not he wanted to appeal notwithstanding that he had plead guilty pursuant to a plea agreement and had been sentenced to a term of imprisonment far less than he would likely have received had he gone to trial and been convicted which was a near certainty given the evidence against him. I met with him either later that afternoon or the following day. He specifically advised me that he did not want to appeal.

Sworn to and subscribed before me this 22<sup>nd</sup> day of December, 2005.

Cheryl Mitchell  
 Notary Public  
 My commission expires: 7/27/2008

**Certificate of Service**

I hereby certify that I have served a copy of the foregoing upon the United States and upon Horace Black by placing copies in the United States Mail, postage prepaid and properly addressed on this the 22<sup>nd</sup> day of December, 2005.

Terry R. Smyly